



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a Monetary Order for the return of double the security deposit and pet deposit and to recover the filing fee.

The tenants filed this application on February 04, 2011 and served the landlord by registered mail on with a copy of the Application and Notice of Hearing. The landlord confirmed receipt of the hearing documents on February 08, 2011. Both Parties confirm receipt of the other Parties' evidence.

Both Parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, and in written form, documentary form, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Are the tenants entitled to receive double the security deposit and pet deposit?

### Background and Evidence

Both Parties agree that this tenancy started on July 01, 2009. This was a fixed term tenancy for one year and a mutual agreement was signed by the parties to end the tenancy early on April 30, 2011. Rent for this unit was \$1,700.00 per month and was due on the first of each month. The tenants paid a security deposit of \$850.00 on June 07, 2009 and a pet deposit of \$300.00 on June 21, 2009.

The tenants testify that they gave the landlord their forwarding address before the end of the tenancy and the landlord returned a portion of their security deposit of \$550.00 on May 01, 2010. The tenant states she then gave the landlord her full forwarding address including the postcode by e-mail and asked her to return the balance of the security and pet deposits on May 21, 2010. (Copy provided). The tenant testifies that they did not authorise the landlord to make any deductions from their deposits and testifies that the landlord did not give them a copy of the move in condition inspection report and did not give them opportunity to attend a move out inspection of the property at the end of the tenancy before new tenants moved in on May 01, 2010.

The tenants seek to recover their security deposit and pet deposit as it was not returned to them within 15 days of the landlords receiving the forwarding address. The tenants also seek to recover the filing fee of \$50.00 paid for this application.

The landlords' agent testifies that she inspected the property without the tenants being present and found the tenants had not cleaned the carpets or drapes in the unit. The landlords' agent states the balance of the deposits were withheld because of this and she was not aware that she had to either return the deposits or file an application to keep them in accordance to the *Residential Tenancy Act*. The landlords' agent confirms she did return \$550.00 to the tenants on May 01, 2010. The landlords' agent states the tenants finished moving out late at night and when she called her to ask her for the keys the tenant told her she would return them the next day when she picked up the security deposit. The landlords' agent testifies that the tenant agreed they had not cleaned the carpets or drapes. The landlord has provided copies of the carpet cleaning receipt and receipt for cleaning the drapes.

### Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit and pet deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things

and does not have the written consent of the tenant to keep all or part of the security deposit and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit and pet deposit to the tenant.

I further find that Sections 35(3) and 35(5) of the *Act* require a landlord to complete a condition inspection report at the end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection report. In failing to complete the condition inspection report when the tenants moved out, I find the landlord contravened s. 35(3) of the *Act*. Consequently, s. 36(2)(c) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on May 21, 2010. As a result, the landlord had until, June 05, 2010 to return the tenants security deposit and pet deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit or pet deposit and has not filed an application for Dispute Resolution to keep either deposits. Therefore, I find that the tenants have established a claim for the return of the security deposit and pet deposit and pursuant to section 38(6)(b) these deposits will be doubled to the sum of **\$2,300.00**. The portion of security deposit that has been returned of \$550.00 will be deducted from this the amount owed to the tenants.

I also find the tenants are entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*. The tenants are entitled to a Monetary Order as follows:

Double the security deposit	\$1,700.00
<b>Subtotal</b>	<b>\$2,300.00</b>
Less amount all ready returned	(-\$550.00)
Plus filing fee	\$50.00
<b>Total amount due to the tenants</b>	<b>\$1,800.00</b>

### Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,800.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 01, 2011.

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Residential Tenancy Branch